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**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

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Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/894,211 07/30/97 HAMMER M 2036.018PCT

PM82/0721
LEVISOHN LERNER BERGER & LANGSAM
757 THIRD AVENUE
NEW YORK NY 10017

EXAMINER

KNIGHT, A

ART UNIT	PAPER NUMBER
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3626

DATE MAILED:

07/21/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/894,211

Applicant(s)

HAMMER, MORDECHAI

Examiner

Anthony Knight

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 1999.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 19, 26-29, 32, 33, 35-40 and 42-49 is/are rejected.
- 7) ☒ Claim(s) 5-18, 20-25, 30, 31, and 34 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☒ Interview Summary (PTO-413) Paper No(s). 13.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. § 120 as follows:

An application in which the benefits of an earlier application are desired must be copending with the prior application or with an application similarly entitled to the benefit of the filing date of the prior application.

Copendence does not exist between Application No. 08/238,299 and the present application. The claim for priority must be amended to remove Application No. 08/238,299 and its string of applications.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 48, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). Applicant should note that the phrases "and the like" and "or the like" are considered to be similar.

Claims 19, 26-29, 32, 39, 40, and 42-47, the phrase "adapted for use" makes the scope of the claim unclear. While the examiner has assumed that applicant is claiming the combination, it can be argued that the claim is merely directed to the subcombination. Applicant is required to clarify the claim by

positively reciting that "the system of claim 1 is a _____", if the claim is a combination claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 19, 26-29, 32, 33, 35-40, and 42-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Steidle, U.S. Patent No. 1,325,053. Steidle discloses a motion transmission and multiplication system comprising:

A first element (31) - The phrases "having at least one point thereon connectable to a tool, object and the like" is not considered to provide any limitation to the claim since the tower is attached to the submarine (1) and rings (32) are objects.

A second element (38) is attached to the first element.

A first linking means is controllably reversible for driving the first and second elements – The first linking means is comprised of the controllable pneumatic actuation of the mast (page 3, lines 46-50) and the spring biased drums (53) (see page 3, lines 67-73)¹.

The motion can be achieved by hand, see page 3, lines 80-83.

¹ Means-plus-function clause are interpreted in accordance with MPEP § 2181 and the final guidelines for interpreting such clauses published in the Federal Register, Vol. 65, No. 120, pages 38510-16, June 16, 2000.

The mast includes a tool, such as the loop shown atop the mast in Fig. 1.

The control means for determining a working angle of the tool is the rigidity of the cylinders (31, 38, 48, 49). The angle is thus controlled or fixed with respect to the mast.

The pneumatic actuation device is contained within the first and second cylinders. The mast is rotatable with the submarine. The tracks are considered to be the cylinders that move side-by-side.

For the sake of completeness, claims 19, 26-29, 32, 39, 40, 42-47 have been rejected as if the claims are directed only to the subcombination. The phrase "adapted for" is considered to not provide any limitation to the claims since the structure is not positively claimed as a combination.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3¹⁵ and 4¹⁵ are rejected under 35 U.S.C. 103(a) as being unpatentable over Steidle. Steidle discloses the claimed invention with the exception of the driven and driving motions being in opposite directions. The direction of motion is considered to be a matter of choice in design in the absence of and stated reason or solution to any stated problem and the device of Steidle works equally as well.

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ANSWER TO APPLICANT'S ARGUMENTS

Applicant has stated that some of the claims are claims contained in an issued US patent. This does not appear to be the case. However, if it is true, applicant is required to specifically point out the claims in this application and their corresponding US patent.

Applicant argues that the device of the present invention is controllably reversible. While this may not be true for Pipes, Steidle does disclose a device that is controllably reversible. Applicant should not that means-plus-function clauses are given there broadest possible interpretation unless applicant specifically states that the basis for interpretation should be limited to the means disclosed in the specification and any equivalents. The device of Steidle does perform the functions as set forth in the claims and thus the claims are met. The drive of Steidle is considered to be linear and in-line.

Claims 5-18, 20-25, 30, 31, and 34^{and 41} would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is

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filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Knight whose telephone number is (703)308-3179. The examiner can normally be reached on 8-hour days.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

AK
July 16, 2000



Anthony Knight
Supervisory Patent Examiner
Group 3600